

Enforcement of Judgment Debts

Terms of Reference

In March 1975, the Minister for Justice wrote to the Commission asking it to comment and report on a working paper that was prepared by Mr D St L Kelly, of the University of Adelaide, for the Commonwealth Commission of Inquiry into Poverty (“the Commission of Inquiry”).

Background of Reference

When the Commission of Inquiry subsequently published its final report, the Commission extended its terms of reference to include an examination of the full report. One of the primary concerns of the Commission of Inquiry was to avoid undue hardship to judgment debtors.¹ The central recommendation of the Commission of Inquiry was that a debt recovery tribunal should determine an appropriate enforcement remedy only after an examination hearing of the judgment debtor.² The other recommendations of the Commission of Inquiry concerned a legislative regime to support the central recommendation.

Nature and Extent of Consultation

As the terms of reference called for comments on the Commonwealth report rather than an independent investigation of the subject, no working or discussion paper was issued. The Commission delivered its report in April 1977.

No Action Recommended

Because the Commission was asked only to ‘comment and report’ on the subject, it made no formal recommendations for legislative action. However, after examining the report in the context of the position in Western Australia, the Commission made detailed comments on the relevance of the recommendations made by the Commission of Inquiry.

With regard to the Commission of Inquiry’s central recommendation (that a debt recovery tribunal should determine an appropriate enforcement remedy only after an examination hearing of the judgment debtor), the Commission commented that:

- While a creditor can initiate an examination hearing, it is arguable that the debtor should also be able to initiate an examination hearing so as to be able to re-organise his or her financial affairs.
- Enabling orders to pay by instalments to be made on the basis of an attested questionnaire, without the debtor having to specifically attend court, might save expense, inconvenience and delay.

The Commission deferred consideration of a debts recovery tribunal for its concurrent Project No 63.³ In that report, the Commission recommended that the *Local Courts Act 1904 (WA)* and its accompanying rules be amended to create a Small Debts Division in Local Courts.⁴ However, the purpose of the proposed Small Debts Division was only to provide a simplified procedure for small disputes.⁵ In this sense, the Commission did not agree with the recommendation of the Commission of Inquiry that a debt recovery tribunal should concern itself with protecting the debtor from hardship.

1 Law Reform Commission of Western Australia, *Report on Enforcement of Judgment Debts* Project 61 (1977) 6.

2 Ibid 1.

3 Law Reform Commission of Western Australia, *Small Debts Court*, Project No 63 (1979).

4 These recommendations were implemented by the *Local Courts Amendment Act 1982 (WA)*.

5 Project No 63, above n 3, paras 3.10–3.11; 3.13.